

IN THE CIRCUIT COURT OF AUDRAIN COUNTY, MISSOURI

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| STATE OF MISSOURI ex rel. |) | |
| JEREMIAH W. (JAY) NIXON |) | |
| and THE MISSOURI DEPARTMENT |) | |
| OF NATURAL RESOURCES, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. |
| |) | |
| CARGILL, INCORPORATED, |) | |
| |) | |
| Defendant. |) | |
| |) | |

CONSENT JUDGMENT

COME NOW, plaintiff, State of Missouri, and defendant, Cargill, Incorporated, an integrated pork producer with operations in Audrain County, by and through their attorneys, and for the purpose of resolving the issues raised by plaintiff's Petition herein and all violations of the Missouri Clean Water Law by defendant up to and including the date of entry of this Consent Judgment, stipulate and agree that this Consent Judgment may be entered and binding upon the parties. Defendant acknowledges receiving a copy of the Petition and all parties submit herein to the jurisdiction of the Court.

Pursuant to this Consent Judgment, Plaintiff is obtaining a civil penalty and injunctive relief against Defendant in compromise and full settlement of the issues raised in plaintiff's Petition. This Consent Judgment provides for stipulated penalties or other remedies for further relief for violations of the Missouri Clean Water Law and this Consent Judgment during the period of the Court's continuing jurisdiction over this matter.

The parties acknowledge that they understand the terms of the following Consent Judgment, agree to be bound thereby and consent to its entry without trial or further proceedings.

The parties further acknowledge that they have had a full and fair opportunity to consult with counsel with respect to the entry of this Consent Judgment which was jointly drafted by the parties.

The Court finds that the terms of this Consent Judgment do protect the public interest.

NOW THEREFORE, it is ORDERED, ADJUDGED and DECREED as follows:

(1) For purposes of this Consent Judgment, this Court has jurisdiction over the subject matter of this action and over the parties consenting hereto.

(2) The subject matter of this action involves allegations of violations of the Missouri Clean Water Law, §§ 644.006 to 644.141, RSMo, and the regulations promulgated by the Missouri Clean Water Commission pursuant thereto (referred to herein collectively as "the Missouri Clean Water Law") with respect to the actions of Cargill at the confined animal feeding operation ("CAFO") in Audrain County, Missouri.

(3) The provisions of this Consent Judgment shall be binding upon the parties to this action as well as their agents, servants, employees, heirs, successors, and assigns but does not bind contractors such as Bill McCaw. The State of Missouri and Defendant agree that this Consent Judgment is in full resolution, settlement, compromise and satisfaction of all allegations of past violations of the Missouri Clean Water Law and other applicable provisions arising between May 27, 1999 up to and including the date of entry of this Consent Judgment.

(4) Cargill manages a swine confined animal feeding operation ("CAFO") in Audrain County known as the "McCaw Farm." On or about July 27, 2000, through July 31, 2000, Cargill illegally discharged and disposed of hog waste into the Loutre River, a tributary of the Missouri River. The illegal disposal was accomplished by negligently discharging the hog waste from a

storage basin through a point source and into the receiving river, which constitutes the waters of the state.

CORRECTIVE ACTION

(5) The McCaw Farm has not been used to produce swine since July 2001. Defendant shall not stock animals in the McCaw Farm on or before November 3, 2002. Thereafter, Defendant may stock the McCaw Farm only consistent with a duly-issued Missouri State Operating Permit issued in Defendant's name and with the Missouri Department of Natural Resources' approval of the waste-handling, treatment, and disposal systems. Such a suitable waste-handling, treatment and disposal system shall (a) reduce the land required for land application of wastes by at least fifty percent over the acreage required for land application with the present system; (b) reduce the hydraulic demands of the waste-handling, treatment and disposal system by at least fifty percent over the present hydraulic system; or (c) rely on next-generation containerized storage, solids separation, and approved land application by methods other than traveling gun irrigation. The parties acknowledge that Defendant's operation of this facility also is contingent on its reaching agreement with the facility owner.

PENALTY

(6) Defendant is hereby assessed and ordered to pay a civil penalty in the amount of One Hundred and Sixty Thousand Dollars (\$160,000.00) for past violations of the Missouri Clean Water Law as alleged in Plaintiff's Petition. Upon entry of this Consent Judgment, Defendant shall submit a certified check in the amount of One Hundred and Sixty Thousand Dollars (\$160,000.00) made payable to the "Audrain County Treasurer as Trustee for the Audrain County School Fund." Defendant shall cause the certified check(s) to be delivered to William J.

Bryan, Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102, for transmission to the Audrain County Treasurer as Trustee for the Audrain County School Fund.

NATURAL RESOURCE DAMAGES

(7) Defendant is hereby assessed and ordered to pay to the State of Missouri the sum of Seventy-five Thousand Dollars (\$75,000.00) in full satisfaction of all claims for natural resource damages as alleged in Plaintiff's Petition. Upon entry of this Consent Judgment, Defendant shall submit two certified checks in the amount of Thirty-seven Thousand Five Hundred Dollars (\$37,500.00). One check shall be made payable to the "Natural Resources Protection Fund" per § 640.235.2, RSMo 2000, and one shall be made payable to the "Missouri Conservation Commission Fund." Defendant shall cause the certified check(s) to be delivered to William J. Bryan, Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102 (Said sums shall be for use as authorized under §§ 640.220 and 640.235, RSMo 2000, subject to appropriation by the general assembly).

(8) Defendant is hereby assessed and ordered to pay the sum of Fifty-one Thousand Seven Hundred Seventy-eight Dollars and Sixty-five Cents (\$51,778.65) to the State of Missouri as restitution upon entry of this Consent Judgment. Defendant shall submit a certified check in the sum of Forty-One Thousand Seven Hundred Seventy-eight Dollars and Sixty-five Cents (\$41,778.65) made payable to the "State of Missouri." Of the Forty-one Thousand Seven Hundred Seventy-eight Dollars and Sixty-five Cents (\$41,778.65) due, Twenty Thousand Four Hundred Twenty-nine Dollars and Seventeen Cents (\$20,429.17) represents the economic value of fish killed; Four Thousand Seven Hundred Fifty-eight Dollars and Twenty-five Cents (\$4,758.25) represents the investigative costs of the Missouri Department of Conservation; and

Sixteen Thousand Five Hundred Ninety-one Dollars and Twenty-three Cents (\$16,591.23) represents the investigative and response costs of the Missouri Department of Natural Resources. Of the Forty-one Thousand Seven Hundred Seventy-eight Dollars and Sixty-five Cents (\$41,778.65), Twenty-five Thousand One Hundred Eighty-seven Dollars and Forty-two Cents (\$25,187.42) shall be transferred from the Natural Resources Protection Fund to the Conservation Commission Fund per § 640.235.4, RSMo 2000. All of the foregoing funds shall be deposited for use only as authorized by § 640.235, subject to appropriation by the general assembly. In addition, Defendant shall submit a certified check in the sum of Ten Thousand Dollars (\$10,000.00) made payable to the order of “Missouri Attorney General’s Office” for costs incurred by the Missouri Attorney General’s Office in connection with this matter. Any restitution sums that the Defendant has already paid to the State of Missouri pursuant to any court order related to events at the McCaw Farm shall be credited against the sums referenced in this paragraph.

GENERAL TERMS

(9) Defendant shall comply with the Missouri Clean Water Law and implementing regulations to the extent it merges the CAFO in Audrain County.

(10) This Consent Judgment may be modified or amended only by written agreement between the parties and with the approval of the Court.

(11) Nothing in this Consent Judgment shall preclude either party from applying to this Court to enforce this Consent Judgment, or the State of Missouri from applying to this Court to enforce Missouri Clean Water Law, if violations of the Consent Judgment or the Missouri Clean Water Law occur or continue to occur.

(12) This Court shall have jurisdiction over this matter to enforce the terms and conditions of this Consent Judgment and to resolve disputes arising under this Consent Judgment.

(13) Each party shall pay its own costs of any nature, including but not limited to, attorneys fees and expert witness fees incurred up to the entry of this Consent Judgment, except as expressly provided herein.

(14) In the event Defendant is in compliance with all the obligations contained herein, this Consent Judgment shall terminate December 1, 2003.

WE HEREBY CONSENT to the entry of this Consent Judgment:

FOR THE DEFENDANT:

Cargill, Incorporated

By: _____ Date: _____

By: _____ Date: _____

Richard E. Greenberg
Greensfelder, Hemker & Gale, P.C.
Attorneys for Defendant

FOR THE PLAINTIFFS:

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL OF MISSOURI

By: _____ Date: _____

William J. Bryan
Deputy Chief Counsel

MISSOURI DEPARTMENT OF
NATURAL RESOURCES

By: _____ Date: _____

Scott Totten, Director
Water Quality and Soil Conservation Division

It is so ordered, adjudged, and decreed this _____ day of _____, 2002.

Judge